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IN THE

Supreme Court of the United States

October Term, 1966

No. 465

EMILIO EMINENTE,

Petitioner,

vs.

LYNDON BAINES JOHNSON, ROBERT S. MCNAMARA, DEAN RUSK,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

Petitioner hereby petitions this Court for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Opinions Below.

This cause was, on motion of respondents, dismissed below without trial. An order by the District Court, of dismissal as to respondent Johnson, entered August 30, 1965, is unreported. An order of the District Court dismissing the cause generally, entered October 22, 1965, is also unreported. The opinion of the Court of Appeals [R. 17-18] is reported at 361 F. 2d 73.

Jurisdiction.

The judgment of the Court of Appeals was entered May 3, 1966 [R. 19]. A petition for rehearing was filed on May 13, 1966 [R. 22]. The said petition for

rehearing was denied on May 23, 1966 [R. 23]. The jurisdiction of this Court is based on 28 U.S.C. §1254-(1). By an order of this Court entered August 10, 1966, the time for filing this petition was extended to and including September 21, 1966.

Questions Presented.

This is a suit for damages to property located in a foreign country. The questions presented are whether, under the allegations in the complaint, (1) this suit is an unconsented suit against the United States; (2) this suit is nonjusticiable; and (3) the petitioner lacks the so-called standing to sue.

The first two questions are presented by the opinion of the court below, and the third by the concurring opinion therein. It does not appear that the court below has questioned the right of petitioner to bring the action, merely on the ground that he is a nonresident alien, express authorization for such a suit being provided in 28 U.S.C. §1350.

As to the third question above, that question, as shown below, really does not arise here. We mention it only for the purpose of showing this.

Statutes Involved Here.

The statutes supporting the jurisdiction of the District Court are as follows:

28 U.S.C. §1332(a)(2), §1332(d):

§1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in

controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

* * *

(2) citizens of a State, and foreign states or citizens or subjects thereof; . . . .

* * *

(d) The word "States," as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. §1350:

§1350. Alien's action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

28 U.S.C. §1391:

§1391. Venue generally

* * *

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.